

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Appeal No. 16002** of Logan Circle Community Association, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Hampton Cross, Director, Department of Consumer and Regulatory Affairs, made on August 18, 1994, to the effect that the building permit issued was based on misrepresentation of the intended use in an SP-2 District at premises 1301 N Street, NW (Square 242, Lot 93).

**HEARING DATE:** December 14, 1994

**DECISION DATE:** January 4, 1995

**ORDER**

**PRELIMINARY AND PROCEDURAL MATTERS:**

1. The appellant stated that the pre-hearing statement was filed one day late. It was due on November 30, 1994, however, not filed until December 1, 1994. In addition, the appellant indicated that two other documents were inadvertently omitted from the December 1, 1994 filing. It was requested that the Board waive the 14-day filing requirement and accept the pre-hearing statement and other documents into the record (Exhibit Nos. 19 and 22). The Board granted the request.

2. The appellant indicated that clarification was needed on whether a letter was mailed to individual Board members from the property owner, thereby causing "ex parte" communication (Exhibit No. 20). The inquiry concerned correspondence, with attachments, from Luther Place Memorial Church to the President of the Logan Circle Community Association. The appellant indicated that the correspondence was of concern because it may have prejudiced the Board members in forming an opinion about the case prior to the hearing. Secondly, the appellant wanted to rebut information contained in the correspondence. Individual members of the Board stated, on the record, that the correspondence was not sent to them at their home address. Rather, the Board members received the correspondence, with attachments, from staff. The information was filed with the Board, made a part of the record, and sent to Board members as part of the package of cases for the December 14, 1994 public hearing agenda. The appellant was satisfied that there was no "ex parte" communication.

3. The last preliminary matter dealt with the property owner stating that appellant had not submitted to the church the exhibits that accompanied their testimony. The appellant stated that the materials were delivered to the church office the evening before the hearing. At the time of the public hearing, copies of the material were hand-delivered to council for Luther Place Memorial Church.

### **SUMMARY OF EVIDENCE:**

1. The Logan Circle Community Association (LCCA) filed the subject appeal on August 26, 1994. The appeal challenged the decision of Hampton Cross, Director, District of Columbia Department of Consumer and Regulatory Affairs (DCRA), concerning the issuance of a building permit, No. B389444, dated August 18, 1994, to N Street Village, Inc. The building permit (Exhibit 4) was issued to the N Street Village for renovation of four existing townhouses and for construction of a new eight-story apartment building addition and two below grade parking levels. The appellant challenged the issuance of the building permit for an apartment house addition on grounds that N Street Village misrepresented the intended use of the building. The appellant's assertion was that the existing buildings and proposed addition would be used to house community-based residential facilities, rather than an apartment building as proposed.

2. The site is located in Square 242 on Lot 93, premises 1301 N Street, NW (Lot 93 previously consisted of lots 81, 82, 90, 802, 837 and 838.) The site contains 21,437 square feet of land area. The building permit application indicates that the townhouses contain 16,449.5 square feet, and that the proposed gross floor area of the building would be 140,634 square feet. The property contains four, four-story dwelling units and they are used to house community based residential facilities. N Street Village, Inc. proposed to use the majority of the site to construct an eight-story, 65-unit, apartment building with a medical clinic, a child development center, and a community center. The estimated construction cost would be \$10 million, including \$1.5 million for renovation of the existing townhouses.

3. N Street Village uses the townhouses as community-based residential facilities (CBRFs). Under Board of Zoning Adjustment Application Nos. 15946, 15956, 15957, 15947 and 15958, N Street Village sought and obtained approval on November 2, 1994 to use the townhouses, as well as other nearby property, as CBRFs. The programs operated by N Street Village in the townhouses are: Sarah House, 1329 N Street, NW which provides transitional housing for homeless women who are recovering from addictions to drugs; Raoul Wallenberg House, 1331 N Street, NW, which provides permanent residential housing for previously homeless women with mental health disabilities; and, Harriet Tubman House, 1333 N Street, NW, which provides transitional housing for homeless women who are awaiting inpatient substance abuse treatment.

4. The appellant argued that the entire building would become one large community-based residential facility. The new facility would consist of the existing townhouses and an eight-story addition that would be constructed at the rear of the townhouses.

5. The appellant indicated that it is important to address the issues in context of the building permit rather than after issuance of the certificate-of-occupancy. It was stated that based on zoning requirements, the property owner must first obtain a special exception to add to the nonconforming uses that exist at the site. The appellant requested the revocation of the building permit by the Board until N Street Village applies for a special exception.

6. The LCCA representatives stated that, based on zoning requirements, an existing use could not expand when that use is required to have BZA approval. Any enlargement or substantive change to an BZA-approved project requires resubmission to the Board.

7. The appellant stated that N Street Village clearly intended to use the new addition to the townhouses as community-based residential facilities based on the following:

- Drawings for the project indicated that one of the four townhouses would be demolished. Each of the remaining townhouses would be connected through openings in the wall. The new addition was designed to accommodate the CBRFs by including spaces intended for institutional uses and assisted living arrangements.
- The District government, on behalf of Luther Place/N Street Village, applied for a \$5 million grant from the U.S. Department of Housing and Urban Development (HUD) to construct permanent housing and provide other services for homeless people. HUD required, as a condition of making the funds available, that the project not have adverse impacts on the Greater 14<sup>th</sup> Street Historic District.
- In order to receive funding from the Federal government, the property owner had to go through a review process referred to as "Section 106". This review involved a series of consultation meetings with members of the President's Advisory Council on Historic Preservation, the District's Historic Preservation Division, Advisory Neighborhood Commission 2F, the DC Department of Housing and Community Development, and the Logan Circle Community Association. During the Section 106 process, N Street Village made numerous representations about its intention to house its existing programs (Sarah House, Tubman House, and Raoul Wallenberg House) in the new building.
- In correspondence to the appellant's counsel (Exhibit 24), the Department of Consumer and Regulatory Affairs (DCRA) indicated that building plans filed for the site and reviewed by the city were for an apartment house. The correspondence stated that if N Street Village proposed to construct the building for CBRF uses, the building permit obtained as an apartment house would not be sufficient. The city knew all along that CBRFs are located at the site, and was disingenuous in approving the building permit for an apartment house knowing that such a permit would not be sufficient to house the CBRFs. Since CBRFs are permitted at the site only by special exception, the building

permit should have been denied until such time as N Street Village is able to successfully demonstrate to the Board that it meets the zoning requirements.

- For years, the DC Department of Consumer and Regulatory Affairs and the Zoning Administrator's office were involved in reviewing the existing uses of the townhouses. It was determined that the CBRFs are only permitted by special exception. In addition, for years, the aforementioned entities have been involved in reviewing applications to build an eight-story addition onto the townhouses to include CBRF-type uses in the new building.
- The interior design of the building does not resemble an apartment house. Rather, the building was designed to accommodate institutional uses. The building was designed to be used for CBRFs, rather than an apartment house, and this should have been clear to the Zoning Administrator,
- The Zoning Administrator should not have assumed that the N Street Village intended to construct an apartment building because that was stated on the building permit application.

8. The appellant presented two witnesses. Christopher Reutershan stated that he was a member of the Board of Directors of the Logan Circle Community Association, as well as a member of the Community Economic Development Committee of ANC 2F; he lived in the District of Columbia for seven years and resided in the same square where the site is located. Bruce Lawson, an architect, testified as an expert.

9. Christopher Reutershan stated that during meetings between the property owner and the various approving entities, all public statements indicated that the existing community-based residential facilities would be a part of the proposed project. The groups reviewing this project were the DC Historic Preservation Review Board (HPRB), the DC Department of Housing and Community Development (DHCD), the Advisory Neighborhood Commission (ANC), the Logan Circle Community Association (LCCA), and the US Department of Housing and Urban Development (HUD). Mr. Reutershan noted that the meetings were held pursuant to Section 106 of the National Historic Preservation Act, and were necessitated because N Street Village was the recipient of a \$5 million special purpose grant from HUD. The grantee was DHCD.

10. Christopher Reutershan indicated that during the Section 106 process, the proposed building went through many design changes, well over 20. During this phase of the project, discussions were held concerning what services would be offered in the building, where the services would be located, and where in the new building existing residents would be located. In addition, there were in-depth discussions concerning how the new space could be manipulated to accommodate the existing uses.

11. A Board member questioned whether it was of importance where the CBRFs are located in the building since the property consisted of only one lot of record. The first witness replied that the issue was whether the building permit should have been issued at all by the city knowing that the townhouses were already used as CBRFs. The testimony was that a building permit issued for an apartment house should not include CBRF uses, unless specifically authorized to do so.

12. Mr. Reutershan referred to "N Street Village Schematic Blocking Layout, Alternative 7B" submitted into the record as a part of Exhibit 28. Mr. Reutershan indicated that the diagram identified the uses the property owner intended to put in the new addition, and that the schematic drawing show Sarah House and Harriet Tubman as containing seven and four bedrooms, respectively, on the third level. In addition, the proposed floor plans show the CBRFs in a different location from where they were officially approved by the Board.

13. Christopher Reutershan made reference to a letter from Luther Place to HUD dated September 11, 1993 (Exhibit No. 28, page 25-4). In the correspondence, HUD stated that "LCCA notes that the need for budgetary reductions could be minimized by using existing space still more efficiently." Luther Place responded to the correspondence by saying that:

LCCA's suggestions for the relocation of programs to achieve greater efficiencies have been studied and considered. The suggestions still reveal a lack of understanding regarding N Street Village programs and their relationship to one another. For example, Local's suggested reorganization of space would result in: (1) an unacceptable separation of Harriet Tubman from Sarah House programs; or (2) dividing the Wallenburg housing between floors; or (3) co-mingling of floors for affordable housing and program space; and (4) the elimination of the Learning Center. The witness indicated that these statements demonstrate that Luther Place all along intended that the new building incorporate the existing CBRFs.

14. Counsel for N Street Village asked Mr. Reutershan if there were any exhibits that specifically showed that the \$5 million grant for affordable housing with support services from HUD was contingent on the expansion of any of the existing CBRFs. The response was "No". Mr. Reutershan stated that based on his involvement with the project and the documentation that he reviewed, the proposed project would not be constructed without the inclusion of the CBRFs.

15. Mr. Bruce Lawson testified that he analyzed, at length, the plans that had been submitted with the building permit application. Mr. Lawson indicated that plans for the building identify an unusual number of units with more than two bedrooms; however, the mix is not unusual based on the occupants who would be occupying the premises. The architect testified that the proposed plans provide for clear access between the existing townhouses and the new building, but the proposed building was validly categorized as an apartment building. Mr. Lawson indicated that:

- The townhouses that are located in front of the proposed apartment building are individually structured, each having its own access. The proposed building plans show that the townhouses would be opened in between. Accordingly, the four existing townhouses would become one single unit.
- The connection of the existing townhouses to the proposed apartment building would be of tremendous benefit to N Street Village. It would allow for additional usable space. Further, parking for both uses could be accommodated simultaneously.
- The layout of the space, including stairways, exits, elevators and hallways, indicates clearly that N Street Village intends to provide access between the community-based residential facilities that are located in the townhouses and the proposed apartment building. All of the buildings would be interconnected.
- The building was not designed as a typical apartment house. For example, in one of the larger apartments, there are multiple toilet and shower stalls.
- The project is unusual because it has five, four bedroom units; four, five bedroom units; and one seven, bedroom unit.

16. The Acting Zoning Administrator stated that the N Street Village submitted to the city architectural plans, a Surveyor's plat, a building permit application, and a topographic survey. These are the requisite items needed to obtain a building permit in the District of Columbia. The subject building permit application was for the renovation of four existing townhouses, including the removal of a portion of the rear, and for the construction of a new eight-story apartment building addition (65 units), and two below-grade parking levels.

17. The Acting Zoning Administrator indicated that the architectural drawings showed a medical clinic for humans, a child development center, and a community center with an accessory garage, in addition to the 65 apartment units. All of these are matter-of-right uses in the SP-2 District. A building permit, Application No. B389444, was issued on August 18, 1994 for the "renovation of four existing townhouses, including the removal of a portion of the rear, and a new eight-story apartment building addition with two below grade parking levels".

18. In correspondence dated May 31, 1994, the appellant wrote the director of the Department of Consumer and Regulatory Affairs seeking to clarify whether the building permit issued to N Street Village also included using the building for community-based residential facilities. In consultation with the office of the Corporation Counsel, DCRA responded (Exhibit 24) and informed the appellant that if N Street Village proposes to construct the building for any use other than an apartment house that the previously issued permit would not be sufficient. The letter also stated that the project's environmental requirements were reviewed and found to be sufficient.

19. The Acting Zoning Administrator testified that although the drawings show a corridor that would be common to both uses (CBRFs and apartment house), it is not uncommon to have mixed-uses within a building. Further, the architectural plans and all other documentation support the conclusion that the structure was designed as an apartment house, with ancillary services, that is permitted in the SP District. Finally, the Acting Zoning Administrator's decision about any pending building permit can only be based on what is stated on the application, and review of plans. If there are obvious discrepancies, they are brought to the attention of the property owner. Otherwise, if information is misrepresented on an application, that becomes an enforcement issue.

20. There were two major concerns directed at the Acting Zoning Administrator. First, the appellant and the Board inquired why a building permit was issued to N Street Village while there was a letter written by the LCCA to the Director of DCRA questioning the use of the proposed building. The Acting Zoning Administrator stated that she was not aware of the letter until after the issuance of the building permit.

21. Secondly, the description of proposed work on the building permit application reads as follows: "renovation of existing 4 townhouses, including removal of a portion of the rear; a new 8-story apartment building addition and two below-grade parking levels." The Board inquired why the Zoning Administrator's office signed-off on the building permit application knowing that there were special exception applications pending before the Board on a portion of the premises. Additionally, at minimum, the Zoning Administrator's office should have inquired about the effect of the proposed townhouse remodeling on the pending BZA applications, particularly because the alteration/repair work would cost over \$1.5 million.

22. The Board determined that the correct course of action would have been for the Zoning Administrator's office not to approve the portion of the project that was connected to the applications pending before the BZA. The Board stated that the building permit should have been issued only for the new addition because it contained matter-of-right uses. The portion of the building permit connected to the townhouses should have awaited the Board's decision on the pending BZA cases.

23. The President of N Street Village, Dale McDaniel, testified that the apartment building would be used, unequivocally, to provide low-income affordable housing with support services such as a community center, day care and after-school care. N Street Village also provided the following information:

- Luther Place had been operating programs from the townhouses for many years with the full knowledge of the District government. The facilities were previously classified as rooming and boarding houses. The Zoning Regulations changed, and it was determined that the previously issued certificates-of-occupancy were no longer valid to operate the existing programs from the site.

- Luther Place was fined \$2,500 and threatened with closure of its facilities for noncompliance of the zoning requirements, prior to applying to the Board of Zoning Adjustment for special exception relief.
- The programs that are provided in the townhouses are part of a continuum of care concept. The missing component of the program is affordable housing for people who are homeless. In order to improve the self-sufficiency of homeless people, Luther Place has learned, through experience, that in addition to providing services, the missing link is housing.
- The cornerstone of the project is the desire to address the problem of homelessness. The project would provide permanent affordable rental housing, with a wide spectrum of on-site support services, for formerly homeless and other families with limited income.
- Luther Place is designing a homeless demonstration project that could serve as a nationwide model. Funding for the project was obtained from the federal government. Low-income housing tax credit was obtained from the District of Columbia government, which allowed N Street Village to go forward with the proposed building. The project, as described in the building permit application, would be in compliance with the requirements of the Special Purpose Grant that was received. If the building were not completed by December 1996, the tax credits would be lost.
- The design of the building had changed and evolved continuously over the last few years. The building is designed to be flexible, able to accommodate affordable housing and support services, as well as N Street Village's administrative and programmatic needs as they change. The programs have continued to evolve, and exactly what components will be a part of the continuum in the future had not been determined. The immediate plan is to operate the affordable housing with a spectrum of on-site services that may be in the building as a matter-of-right.
- During the long period of renovation and construction, plans are to relocate the recently designed CBRF programs currently operated at the site to other, as yet unidentified locations.
- If it were necessary to relocate the CBRFs in the new building when it is completed, special exceptions would be sought to do so at that time. If the Board denied the special exception request, the building is designed for matter-of-right uses.
- The proposed apartment house would not be constructed to specifically house CBRF uses. The proposed seven-bedroom apartment unit could be used to house people from other ministries who are living and working together while studying the continuum of care concept. Two potential uses for the seven-bedroom apartment unit are housing for a resident study program, and the Lutheran Volunteer Program (a program for which Luther Place Church currently rents space in other buildings).



- The U.S. Congress provided funds for 137 designated special purpose grants. The Luther Place Church Homeless Demonstration Project was one of the projects funded. In addition, the church has a sub-grant agreement with DHCD (Exhibit No. 29),
- There is no condition in the grant documents that specifically states that CBRFs must be located at the site to receive the funding.

### **FINDINGS OF FACT:**

1. The building permit application submitted by N Street Village, Inc. proposes to build an apartment building with supportive services.
2. The Acting Zoning Administrator determined that the proposed building was an apartment building with supportive services based on a review of the plans submitted with the application and the relevant building codes.
3. The review process conducted under Section 106 of the National Historic Preservation Act was limited to the exterior design of the building and was concluded in November 1993. The Acting Zoning Administrator did not participate in the 106 process.
4. The programs operated by N Street Village, as part of the continuum of care concept, have changed and evolved substantially over the years.
5. N Street Village plans to relocate the CBRF programs that currently exist at the site to other locations during the period of construction.
6. N Street Village, Inc. did not indicate on the permit application any potential interest in locating existing programs that have been designated as CBRFs in the proposed building because of uncertainty about the type, size and relocation of the programs.
7. The \$5 million Special Purpose Grant, to partially finance the proposed building, does not require the location of CBRF programs in the new building.
8. The owner intends to operate the building as an apartment building with supportive services that are permitted as a matter-of-right.

### **CONCLUSIONS OF LAW AND OPINION:**

Based on the foregoing summary of evidence and findings of fact, the Board concludes that the decision of the Zoning Administrator must be upheld. The Board concludes that the Zoning Administrator properly based the decision to issue the building permit on the plans and other supporting documentation presented by the property owner. The Board is persuaded that the Zoning Administrator's office did not error in issuing the building permit.

The Board concludes that the evidence did not support the appellant's assertion that CBRFs would be located in the apartment building. Further, the evidence did not demonstrate that the approved plans would not be able to comply with the applicable regulations and codes nor that proper review was provided. The Board notes that the issuance of the building permit was not subject to review and approval by the Board since no special exception relief was required. The Board further concludes that the Zoning Administrator's determination to issue the building permit was in compliance with the applicable provisions of the Zoning Regulations.

The Board found troubling the lack of clarity about whether the existing CBRFs would be relocated in the new building. It was indicated that even though the project is a demonstration, there should have been more specific information about how the continuum of care concept would work at the site, after the building is constructed.

The Board concludes that the Logan Circle Community Association has failed to present evidence to the Board which indicates that the Acting Zoning Administrator failed to properly interpret the provisions of the Zoning Regulations, or that an error was made in issuing the subject building permit based on plans submitted for review by the property owner. Accordingly, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Zoning Administrator in issuing Building Permit No. B389444 is hereby **UPHELD**.

**VOTE: 3-1** (Angel F. Clarens, Craig Ellis and Susan Morgan Hinton to deny; Laura M. Richards opposed to the motion).

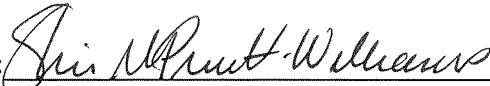
#### **EXCEPTIONS:**

The proposed order was sent to parties on June 25, 1998. Exceptions were due July 10, 1998. Responses were due July 20, 1998. N Street Village, Inc filed exceptions to the proposed order. The Board considered the draft order and the exceptions at its public meeting of September 2, 1998.

**THE ORDER WAS ADOPTED, AS MODIFIED, BY THE BOARD OF ZONING ADJUSTMENT ON SEPTEMBER 2, 1998.**

**VOTE: 3-0** (Angel F. Clarens, Betty King and Sheila Cross Reid to adopt.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:   
SHERI M. PRUITT-WILLIAMS  
Interim Director

OCT - 2 1998

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER 11 DCMR 3103. 1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

Appeal No. 16002/BAB/9.10.98

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPEAL NO. 16002**

As Interim Director of the Office of Zoning, I hereby certify and attest that on OCT - 2 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning the matter, and who is listed below:


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ATTESTED BY:

  
SHERI M. PRUITT-WILLIAMS  
Interim Director

DATE: OCT - 2 1998